

### **Workplace vaccination law**

- Paid time off to vaccinate
- 4 weeks notice
- Vaccination assessment tool mid-December 2021

On 26 October 2021 the COVID-19 Response Minister, Chris Hipkins announced the introduction of a range of measures to help protect workplaces and workers from COVID-19. Last week those measures passed through Parliament as part of the COVID-19 Response (Vaccinations) Legislation Act 2021.

A new [Schedule 3A](#) – Provisions relating to COVID-19 vaccinations - has been added to the Employment Relations Act 2000, and is summarised below.

### **Paid time off for COVID-19 vaccination**

An employee is entitled to reasonable paid time off during their normal working hours to receive a dose of a COVID-19 vaccine if providing the time off would not unreasonably disrupt—

- their employer’s business; or
- the performance of the employee’s employment duties.

Before taking paid time off, the employee must notify their employer of—

- the date and time on which they intend to be vaccinated; and
- the amount of time that they expect to take as paid time off, including any time spent travelling to or from a location to receive the vaccine.

An employer may refuse to allow an employee to take paid time off only if satisfied, on reasonable grounds, that providing the paid time off would unreasonably disrupt the employer’s business or the performance of the employee’s employment duties.

Paid time off must be paid at the rate of pay that the employee would otherwise have received if they were performing their ordinary employment duties during that time.

### **Termination of employment agreement for failure to comply with relevant duties or determination**

The following employees are covered:

- employees who have a duty under the COVID-19 Public Health Response Act 2020 not to carry out work unless they are—
  - vaccinated; or
  - required to undergo medical examination or testing for COVID-19; or
  - otherwise permitted to perform the work under a COVID-19 order:
- employees whose employer has determined the employee must be vaccinated to carry out their work.

If the employee is unable to comply with a duty or a determination, or they are not vaccinated by the specified date, their employer may terminate their employment by giving them 4 weeks' written notice. If the employment agreement provides for longer notice, such longer notice must be given.

Before giving notice of termination, the employer must ensure that all other reasonable alternatives to termination have been exhausted.

A termination notice is cancelled and of no effect if the employee becomes vaccinated or otherwise permitted to perform the work under a COVID-19 order, during the notice period, except if cancelling the notice would unreasonably disrupt the employer's business.

An employee whose employment agreement is terminated under this provision may bring a personal grievance or legal proceedings in respect of the dismissal.

Employer and employee may mutually agree to paid termination on the terms set out above.

### **Vaccination assessment tool**

Business.govt.nz has published [information about the tool](#). The vaccination assessment tool will be made through regulations under the COVID-19 Public Health Response Act 2020 – see Workplace Relations and Safety Minister Michael Wood's [press release](#).

This tool will provide a clear, legal framework to help businesses make decisions about vaccinations in the workplace. It will be optional for businesses to use the tool. The tool will not override any risk assessments that have already been done.

The tool is likely to include the following four factors, though further testing and refinement will happen over the next few weeks.

Factor	Lower risk	Higher risk
<b>What type of environment does the worker work with?</b>	100m <sup>2</sup> indoor space or greater, or outside	Less than 100m <sup>2</sup> indoor space
<b>How close does the person work to other people?</b>	At least 1 metre apart	Less than 1 metre apart
<b>How long is the worker in proximity to other people?</b>	15 minutes or less	More than 15 minutes
<b>Does the worker provide services to people who are vulnerable to COVID-19?</b>	No	Yes

At least three of the higher-risk indicators for these factors will need to be met before it would be reasonable to require vaccination for particular work.

It will be optional for businesses to use the tool. They will still be able to use other health and safety risk assessment processes. The tool will not override any risk assessments that have already been done. WorkSafe has provided guidance on how these decisions can be made.

In the tool, the factor relating to ‘vulnerable people’ is defined as people who are:

- under the minimum age to be vaccinated;
- medically exempt from being vaccinated; or
- at higher risk of severe illness from COVID-19.

The Unite Against COVID-19 website has a section that sets out who is at higher risk of severe illness if they contract COVID-19 and the definition of vulnerable people is based on this definition.

[How to decide what work requires a vaccinated employee](#) — Worksafe

[People at a higher risk of severe illness from COVID-19](#) — Unite Against COVID-19

Business.govt.nz promises to publish more information shortly.

**This article is brought to you by AdviceWise People, who provide WGANZ’s free employment helpline 0800 692 384. If you have any questions or would like to discuss the article, please call Philip or Anthony.**